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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,345	04/09/2004	Robert J. Antonellis	345 P002	1000

7590 01/31/2007

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EXAMINER	
FADOK, MARK A	
ART UNIT	PAPER NUMBER
3625	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/821,345	ANTONELLIS, ROBERT J.	
	Examiner	Art Unit	
	Mark Fadok	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-225 is/are pending in the application.

4a) Of the above claim(s) 2-9,11-22,24-29,35-75,77-121,123-128,130-141,143-148,154-182 and 185-225 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,10,23,30-34,76,122,129,142,149-153,183 and 184 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 11/6/2006.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The examiner is in rece4ipt of applicant's response to office action mailed 6/7/2006, which was received 11/6/2006. Acknowledgement is made that no am3endments were made to the instant claims leaving claims 1,10,23,30-34,76,122,129,142,149-153,183 and 184 as open to prosecution. Applicant's arguments have been carefully considered, but were not found to be persuasive, therefore, the previous office action is restated below.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Information Disclosure Statement

The information disclosure statement filed 11/6/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other

information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,10,23,30-34,122,129,142,149-153 rejected under 35 U.S.C. 102(e) as being anticipated by August et al. (US 2002/0143638).

1. An order optimization system, comprising: a device, said device being capable of communicating with an establishment computer and transmitting an order to said establishment computer (FIG 1, item 11), said establishment computer having software enabled means for receiving said order (FIG 1, item 17), assigning resources to said order (FIG 6, item 143), and commanding the fulfillment of said order (FIG 6).

10. The order optimization system according to claim 1, wherein said device is a telephone (FIG 2, item11).

23. The order optimization system according to claim 1, wherein said software enabled means for receiving said order comprises a telephony system, wherein said order is input via audible communication (FIG 2, item 16).

30. The order optimization system according to claim 1, wherein said means for receiving said order comprises software enabled mean for displaying a series of hierarchal menus on a visual display (FIG 9).

31. The order optimization system according to claim 1, wherein said means for assigning resources to said order comprises software enabled means for determining the availability of at least one limiting resource necessary to fulfill said order (FIG 6, item 141).

32. The order optimization system according to claim 31, wherein said means for determining the availability of at least one limiting resource necessary to fulfill said order comprises software enabled means for referring to a look-up table comprising information that associates different types of limiting resources with different types of orders (FIG 6, item 141).

33. The order optimization system according to claim 31, wherein said means for assigning resources to said order comprises software enabled means for determining a set of components for said order, and software enabled means for determining the availability of at least one limiting resource necessary to fulfill each of said order components FIG 6, item 141).

34. The order optimization system according to claim 33, wherein said means for determining the availability of at least one limiting resource necessary to fulfill said order components comprises software enabled means for referring to a look-up table comprising information that associates different types of limiting resources with different order components (FIG 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 76, 183 and 184 are rejected under 35 U.S.C. 103(a) as being unpatentable over August in view of McDonald, Jr. et al (US PGPub 20020077750) and further in view of Borton (US PG pub 20020188492).

In regards to claim 76, August teaches providing information about the completion and availability of orders (FIG 10), but does not specifically mention that this information along with assigned, unassigned and reassigned information is provided to a delivery driver. McDonald, Jr. teaches providing status information to delivery drivers (FIG 3). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in August providing scheduling information to the drivers because displaying this information to assigned drivers would prevent the driver leaving the store without all the required deliveries (Borton, page 1, para 0012).

In regards to claims 122,129,142,149-53,183 and 184, these claims are considered parallel claims to claims 1,10,23,30-34 and 76 and are rejected for the same rationale.

Response to Arguments

Applicant's arguments filed 11/6/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identification of resources) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that there is not an assignment of resources to the order and goes on to state that "FIG 6, 143 is simply and instruction for some unidentified employee at fulfillment station 19 to make the order. Applicant's specification (para 0083, PG PUB 20040210621) states "the simplest optimization rule may be to assign an available resource to the order which was placed earliest in the Set of Pending Orders". The examiner contents that sending the order to fulfillment meets the limitation of the

instant claims in that as noted by the applicant sending the order to fulfillment assigns resources to the fulfillment of the order.

In regards to claims 31-34 applicant argues that August does not teach "determining the availability of at least one limiting recourse necessary to fulfill the order". The examiner disagrees and maintains that checking inventory before totaling the order (accepting the order) reads on the claimed features in claims 31-34.

In response to applicant's argument that there is no suggestion to combine the references in claims 76, 183 and 184, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both teaching involve the efficient placement of an order.

In response to applicant's argument that McDonald, Jr., could be used to inform delivery drivers of assigned, unassigned and re-assigned orders there is no showing that the unit is so doing, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Further in response to applicant's argument that McDonald, Jr., could be used to inform delivery drivers of assigned, unassigned and re-assigned orders there is no

showing that the unit is so doing, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including After Final communications labeled "Box AF"]

For general questions the receptionist can be reached at 571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Fadok
Primary Examiner